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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

OAKDELL EGG FARMS, INC., A
WASHINGTON CORPORATION,

Plaintiff,

v.

GREAT AMERICAN E&S INSURANCE
COMPANY, A FOREIGN CORPORATION

Defendants.

Case No. 4:23-cv-05025

DEFENDANT GREAT AMERICAN E&S
INSURANCE COMPANY'S NOTICE OF
REMOVAL

Defendant GREAT AMERICAN E&S INSURANCE COMPANY ("Great American"), by and through its undersigned counsel, SELMAN LEICHENGER EDSON HSU NEWMAN MOORE LLP, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby removes index number 23-250004-11 from the Superior Court of the State of Washington for Franklin County to the United States District Court for the Eastern District of Washington. In support of this removal, Great American states and alleges as follows:

PROCEDURAL BACKGROUND

1. Plaintiff Oakdell Egg Farms, Inc. ("Plaintiff") commenced a civil action against Great American in the Superior Court of the State of Washington for Franklin County styled "*Oakdell Egg Farms, Inc. v. Great American E&S Insurance Company*," bearing index number

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23-250004-11, (“the State Court Action”). A copy of the Summons and Complaint filed in the State Court Action are attached as Exhibit “A.”

2. In the Complaint, Plaintiff asserts that Great American issued a Product Recall Insurance Policy – bearing policy number PRC2644578-03 – that had an effective policy period from October 8, 2021 to October 8, 2022 (“the Policy”). *See* Ex. A, Complaint at ¶ 8.

3. The Policy has a limit of insurance of \$5,000,000 Each Insured Event and in the Aggregate for the Policy Period, excess of a Self-Insured Retention (“SIR”) of \$250,000 Each Insured Event. *See* Ex. A, Complaint at ¶ 8.

4. According to the allegations of the Complaint, Plaintiff is seeking insurance coverage under the Policy for certain alleged damages and/or losses in connection with an outbreak of Highly Pathogenic Avian Influenza (“HPAI”) that was detected at Plaintiff’s corporate affiliate’s Lewiston, Utah farm in April 2022 (“the Claim”). *See* Ex. A, Complaint at ¶ 2.

5. In the Complaint, Plaintiff states that Great American denied coverage for the Claim in a letter dated July 18, 2022 based upon the “Governmental Determination” insuring agreement, the “Accidental Contamination” insuring agreement, and the Policy’s “Livestock” exclusion. *See* Ex. A, Complaint at ¶ 13.

6. In the Complaint, Plaintiff asserts, *inter alia*, that Great American wrongfully denied the Claim. *See* Ex. A, Complaint at ¶¶ 13-15.

7. Plaintiff seeks declaratory relief; damages for breach of contractual duties under the Policy; damages for bad faith and violations of the Washington Consumer Protection Act (“WCPA”) and the Washington Unfair Claims Settlement Practices Act, including actual, compensatory, and multiplied damages; pre-judgment and post-judgment interest; and attorney’s fees and costs incurred by Plaintiff in support of the Claim and the State Action. *See* Ex. A.

8. Plaintiff filed its Complaint on January 4, 2023 and the Complaint was accepted by the Washington Insurance Commissioner on January 25, 2023.

9. Great American was served with a copy of the Complaint on February 3, 2023.

DIVERSITY JURISDICTION

10. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1332 and 1441, as there is complete diversity of citizenship between Plaintiff and defendant Great American and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

11. Plaintiff is a corporation organized under the laws of the State of Washington with its principal place of business in Pasco, Washington. Plaintiff operates farms in Washington. Plaintiff's corporate affiliate, Ritewood, Inc., operates farms in Idaho and Utah, including the Lewiston, Utah farm where the April 2022 HPAI outbreak occurred. *See* Ex. A, Complaint at ¶4.

12. Defendant, Great American, is an Ohio corporation with its principal place of business located in Cincinnati, Ohio. *See* Ex. A, Complaint at ¶5. Accordingly, there exists complete diversity of citizenship between the parties.

13. Plaintiff's Complaint alleges that plaintiff has sustained significant damages and losses following the United States Department of Agriculture's ("USDA") and Utah State Department of Agriculture and Food's ("UDAF") order recommending that plaintiff euthanize all its hens and destroy all its eggs as a method to contain the HPAI outbreak. *See* Ex. A, Complaint at ¶ 2.

14. Based upon the allegations and the demands of the Complaint filed in the State Court Action, it is facially apparent that the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

15. Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332.

VENUE

16. Venue in the Eastern District of Washington is appropriate under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the district and division encompassing the state court where the State Court Action is pending.

TIMELINESS OF REMOVAL

17. This Notice of Removal is timely in accordance with 28 U.S.C. § 1446(b)(1), because it is filed within thirty (30) days of Great American's receipt of the Summons and Complaint on February 3, 2023.

PAPERS FROM REMOVED ACTION

18. As required by 28 U.S.C. § 1446(a), true and correct copies of all process and pleadings served upon Great American in the State Court Action are attached to this Notice of Removal as Exhibit A.

NOTICE OF FILING NOTICE OF REMOVAL

19. In accordance with 28 U.S.C. §1446(d) and to effect removal, Great American is filing a copy of this Notice of Removal with the Clerk of Superior Court of the State of Washington for Franklin County attached as Exhibit "B."

WHEREFORE, Defendant Great American E&S Insurance Company respectfully requests that this Notice of Removal be filed, that the action pending in the Superior Court of the State of Washington for Franklin County styled "*Oakdell Egg Farms, Inc. v. Great American E&S Insurance Company*," bearing index number 23-250004-11 be removed and proceed in this Court, and that the Superior Court of the State of Washington for Franklin County proceed no further.

DATED: February 27, 2023

By: /s/ Peter J. Mintzer
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Attorneys for Defendant GREAT AMERICAN
E&S INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2023, I electronically filed the foregoing
DEFENDANT GREAT AMERICAN E&S INSURANCE COMPANY'S NOTICE OF
REMOVAL with the Clerk of the Court using the CM/ECF system and served it on the
interested parties via email as follows:

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DATED this 27th day of February, 2023.

/s/ Emily Rose
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